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Protecting the Rights of Air Passengers in West Africa

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Introduction

While it is undeniable that air transport in Africa presents a rather disappointing image today, its future seems promising with the various initiatives taken here and there by States and, above all, by the African Union within the framework of the Single Market for Air Transport in Africa (MUTAA). However, it would be utopian to want a significant development of air traffic on the continent, if we continue to disregard the interests of African air passengers. Therefore, the issue of protecting the interests of African consumers of air transport services is of crucial importance. The interest of this study is therefore to draw the attention of the aviation authorities, and especially the airlines, to the need to ensure effective protection of African consumers and to improve the customer experience, which are important parameters for a competitive air transport service.

1. Definition of Air Transport and Experiences of African Passengers

By air transport[1], we mean the activity of transporting passengers or freight by air, as well as the economic sector comprising the main and ancillary activities relating to this mode of transport. It is mainly carried out by airlines operating airliners flying in the upper troposphere. Air transport, as Merlin Pierre points out, is the newest but fastest growing mode of transport in the world.

In Africa, the emergence of this mode of transport date take back take back to the 1930s when the first commercial flights began at the end of the Second World War. Air transport experienced a timid evolution after the accession of African States to international sovereignty, characterised by the creation of some African airlines and especially by the adoption of some conventions applicable in this field. Today, Africa reprent 17% of the world's population, but only 03% of the world's air traffic. Since independence, the air transport industry has been stagnating and struggling to take off; one of the reasons being the poor quality of service to customers.

1 The air transport that is the subject of this analysis is that which is carried out in Africa with African or foreign airlines.

To this end and at a press conference held in Lomé on 13 September 2018, on the initiative of the Ligue des Consommateurs du Togo (LCT), the President of the African Consumers' Union (UAC) declared that:: "African consumers suffer from several ills in relation to air transport. The complaints we receive are multiple: the prices of tickets are too high, the absence of direct flights between most African cities, considerable delays, overbooking, etc.". Unlike their European or American counterparts, the treatment of African passengers is not at all enviable.

One wonders, therefore, whether there are not mechanisms to protect the rights of consumers of air transport services in Africa? If so, why this persistent and flagrant violation of the rights of African air passengers? Are these passengers an entirely separate category of passengers? Who are the authorities on this matter? Can the development of air traffic in Africa be achieved without considering the interests of the African passenger? How can improving the customer experience contribute to the growth of the air transport industry in Africa? These are the questions to which our analysis will provide food for thought and solutions.

Therefore, one wonders if there are not mechanisms to protect the rights of consumers of air transport services in Africa? If so, why this flagrant and continuous violation of the rights of African air passengers? Would the latter constitute an entirely separate category of passengers? What is the share of responsibility of each actor, in this case, the airlines and state authorities in this matter? Can the development of air traffic in Africa be achieved without taking into account the interest of the African passenger? How can improving the customer experience contribute to the growth of the air transport industry in Africa? These are the questions to which our analysis will provide food for thought and solutions. But first, we will begin by demonstrating the shortcomings and weaknesses of consumer rights protection mechanisms for air services in Africa and highlight the urgency of promoting the respect of these rights for efficient air transport.

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2. The Ineffectiveness of Air Transport Consumer Protection in Africa

Air consumer protection in Africa is not effective because it is not practiced, although it is provided on paper.

i) Text-based protection

Theoretically, there is no doubt that African passengers are legally protected in the same way as those from other continents. The various existing conventions on the subject attest to this protection.

On one hand, the Warsaw Convention of 12 October 1929 based on international standards defines the responsibility of airlines regarding passengers. According to the provisions of Articles 17 and subsequent articles of the said Convention, air carriers are liable in particular for damage in the event of death, injury or any bodily harm suffered by a passenger when the accident which caused the damage occurred during the carriage by air. They are also liable for damage resulting from delay in the carriage of passengers, baggage, or cargo, etc., by air. The Warsaw Convention is supplemented by the Chicago Convention on International Civil Aviation of 7 December 1944.[2]

2 An annex to the Yamoussoukro Agreement which, as a regulation, is binding on the country.

The Sixth World Air Transport Conference, mondiale du transport aérien a également consacré des principes de protection des consommateurs et du cadre règlementaire corrélatif.

At the regional or African level, the decision on the implementation of the Yamoussoukro (Côte d'Ivoire) Declaration on the liberalisation of access to air transport markets in Africa and the Consumer Protection Regulations adopted on 13 and 14 November 1999 in Yamoussoukro provide sufficient protection for African passengers.

These consumer protection regulations also place obligations on air service providers and establish rights that favour consumers. In relation to the obligations, one can cite, for example, the principle of non-discrimination, the obligation to inform consumers of their rights and obligations, the complaint procedures, etc. (Art. 8 and subsequent of the Regulation). Passengers have the right to reimbursement of the full cost of the air ticket at cost price for the part or parts of the journey not made and for the part or parts already made. This is under conditions where the flight no longer corresponds to the purpose of the original flight plan.

Other rights such as the right to re-routing or the right to compensation are also recognised for consumers . When asked by a university professor in Lomé, who has had the opportunity to make several trips with different African airlines, about his knowledge of his rights in air transport, he said: "I don't know my rights. The fault is mine, but also because I don't know where to find the right information. The airlines have to provide easy access to information.

Thus, in the field of air transport in Africa, there is a legal arsenal that protects the interests of consumers. However, most of these rights are not respected in practice and are not easily accessible to passengers in Africa. The airlines and, to a certain extent, the state authorities in charge of the sector have their share of responsibility in this. Consumer rights organisations in Africa are tirelessly trying to engage in dialogue with air travel companies on this issue, but the latter are turning a deaf ear. For example, the Ligue des Consommateurs du Togo (LCT), through letters, has questioned some companies on the non-respect of the fundamental rights of air travellers. It is a letter addressed to the CEO of ASKY on August 16, 2018 in which the LCT mentioned the complaints of 11 passengers who took the flight of the company on August 12, 2018. The plaintiffs mentioned the forgetting of suitcase(s) in Abidjan for the whole delegation while they were all bound for Lomé. It is difficult to explain the reasons behind the refusal of ASKY's chief executive to respond to the complaint of the eleven plaintiffs of its services.

We will present more closely what is found in practice in the field of air consumer protection in the African space.

ii) Protection undermined in practice

African air consumers complain about airlines failing to respect their rights. The various complaints collected by the African Consumers' Union provide sufficient evidence that African airlines show little concern for the welfare of their passengers. These complaints include flights cancellations, which are not in line with the requirements of Article 17 of the Yamoussoukro Declaration. In other words, passengers are generally not given at least 24 hours' notice of the scheduled departure of flights and rarely receive compensation.

The other concern of passengers is the excessively high price of air tickets. Indeed, compared to other continents (American or European), air transport in Africa is very expensive. For a bird's eye view of a 587 km flight from Lomé to Abidjan, the cheapest flight offer is about 296,000 FCFA (452 euros) for a 44-minute trip. A passenger in Europe, on the other hand, pays 211,000 FCFA (323 euros) for 488 km as the crow flies. After analysis, several factors fdo not favour good competition in terms of air fares in Africa. Small fleets, untimely stopovers, numerous flight detours and numerous fiscal taxes are some of the reasons that contribute to the high cost of air tickets on the continent. Cultural factors should also be highlighted, as air travel is still considered a luxury means of transport by some African citizens.

Furthermore, overbooking, flight delays, lack of assistance to passengers in obtaining transit visas, poor hotel accommodation, etc., are other elements that characterise the precarious situation experienced by air passengers in Africa.

In addition, the airlines justify themselves by citing the difficult operating conditions in Africa: the exorbitant cost of traffic rights, excessively high airport taxes, often inadequate infrastructure, ageing fleets and poor cooperation between states are all factors that hinder the development of the air sector in Africa. However, this should not be an excuse for them to systematically and continuously violate consumer rights. Given that the customer experience is a determining factor for the competitive growth of these airlines, it is therefore fundamental and beneficial for them to further promote the respect of passengers' rights.

3. The urgency of promoting respect for air passenger rights in Africa

Promoting respect for air passenger rights is a necessary condition for competitive air transport. But this promotion cannot be effective if the institutions involved in consumer protection remain inactive. It would therefore be important to invigorate these organisations. Consumers often have more confidence in the institutions that defend their interests than in the companies from which they subscribe to services. If this confidence is constant, their involvement will inevitably lead to improvements in the performance of airlines in terms of respect for consumer rights.



According to the Yamoussoukro Declaration, these institutions include the Consumer Protection Agency, the Regional Authority in charge of the Yamoussoukro Decision and the Civil Aviation Authority. The Civil Aviation Authority is the national institution in charge of civil aviation in most African countries. This authority is referred to as the National Civil Aviation Agency (ANAC) in most countries.

Firstly, the Consumer Protection Agency is the institution authorised by the regional economic communities or by the States to regulate consumer protection under the Yamoussoukro Decision. The Consumer Protection Regulation gives it several powers. For example, Article 6 (9) states that: "The Consumer Protection Agency shall monitor the terms and conditions and the degree of compliance by airlines with their obligation under the Warsaw Convention applicable to any State Party. Where it is found that any practice, conduct, policy or procedure adopted by an airline does not comply with its obligations to the consumer, including forcing a passenger to accept compensation schemes that are lower than those to which he or she is entitled, a calculated additional burden that may frustrate, obtain compensation or where compensation is paid on terms that negate the usefulness of such compensation. Such practices must be considered unfair and misleading".

Curiously, this agency, established in the regulations of the Yamoussoukro Declaration, has not yet been set up. Consumer organisations have always insisted that the authorities should be able to set up this agency in which they should represent the interests of consumers. The airport authorities often justify themselves by pointing to conflicts of agenda. However, it should also be pointed out that these authorities often ignore the merits of consumer organisations in the efficient management of companies.

Secondly, the Civil Aviation Authority exists in each State party to the Yamoussoukro Declaration and any consumer can bring a complaint against an air transport service provider before it. Due to the low level of awareness of these instruments, consumers are not sufficiently informed about the complaint procedures available to them. Organisations that dare to make a complaint do not even receive feedback on the subject matter of the complaint . The Ligue des Consommateurs du Togo has lodged a complaint against ASKY with the Agence Nationale de l'Aviation Civile du Togo (ANAC-TOGO) without having received



any feedback from the authority. The silence of the authority in the face of this complaint can be interpreted as a lack of concern and the very low consideration of the latter to the concerns of consumers and, moreover, consumerist organisations.

In any case, the efforts undertaken to revive air transport in Africa could not really bear fruit if the fate of passengers continues to be relegated to the background. In addition to the involvement of consumer rights organisations, airlines must also undertake to fulfil their obligations and to listen to and dialogue with civil society when there are disturbances.

4. Improving Customer Experience as a Key Requirement for Competitive Air Transport in West Africa

The development of air transport cannot really be envisioned without improving the experience of air passengers. Most airlines in West Africa, however, place more importance on their companies than on the loyalty of their customer(s). A customer-focused organisation should in principle be concerned about consumer complaints, which inevitably improves the business relationship between the two parties. The more passengers an airline has, the more it will be able to survive as well as retain their loyalty.

According to the International Air Transport Association (IATA) forecasts for 2018, the volume of air traffic on the African continent is set to increase by 8%. These forecasts are justified by the increase in tourist flows, rapid urbanisation and the emergence of an African middle class. If such a development is projected, the concerns of travellers must necessarily be taken into account to meet the growth of the sector.

For African airlines to be able to meet the demand for air transport in the future, passengers should be reassured by promoting and respecting their rights now. In this sense, it is essential to reconcile the interests of air carriers and their passengers in order to ensure competitive air transport. The preamble to the Consumer Protection Regulations confirms this:

"It is necessary to strike a balance between the right of airlines to operate effectively in a liberalised and increasingly competitive market and the right of the consumer to be assured of adequate protection and to have good information on his rights".

Ultimately, the air carrier and the air passenger are bound by a contract of carriage. The weak protection offered to the air passenger is justified by the fact that the air passenger is an economically weak party compared to the airlines. It is therefore important to get the latter to fulfil their obligations towards consumers, as the development of the sector depends on it.



5. Recommandations

In view of the current situation, there are several possible solutions for both consumer organisations and the authorities in charge of the sector.

i. Consumer organisations in the ECOWAS region can join forces on this issue in order to boost the fight against and protection of the air consumer in the image of their partners in Europe and elsewhere. They must go beyond their sporadic actions, which do not seem to bring results, to take concerted, structured, strategic and continuous actions to improve respect for the rights of African consumers.

ii. Pool the energies of consumer organisations at sub-regional level with a view to setting up a consumer task force to ensure the implementation and monitoring of actions to defend and complain about air travellers. The more consumer organisations are united, the more they will increase their credibility and professionalism. This credibility will create confidence in partnership with the airlines.

iii. Create a web and/or mobile application to receive air consumer complaints and provide guidance to travellers who need it.

iv. Create a buffer line between the airlines and the consumer working group platform responsible for studying and analysing consumer complaints. This could be done through advocacy at the level of the airlines and in concert with community organisations in the sub-region.

v. Effectively and rapidly set up at the national and sub-regional levels, the Consumer Protection Agency in accordance with the Yamoussoukro Decision.

Conclusion

If the airlines do not offer an acceptable solution to the many complaints and concerns of passengers, the latter will be forced to wade between several companies that feel that one would be better than the other, even though they are almost all the same.

Continued good relations between consumers and airlines will be a driving force for the consumer world in the development of the industry. Trust or the feeling of being listened to by airlines necessarily increases the level of customer acceptance of the airline. Assistance, compensation and care for passengers under the various national and sub-regional legal instruments is the perfect embodiment of the spirit of these legal instruments.

Increased collaboration between consumer organisations and airlines is necessary in order to be able to address most air travellers' concerns. But this ideal cannot be achieved without the support of national and sub-regional civil aviation authorities and the active involvement of civil society organisations responsible for defending the rights of African consumers

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